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Supreme Court of the United States

OCTOBER TERM, 1958

No. 140

STANLEY G. EARLE, Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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STATUTES

Immigration and Nationality Act of 1952:	
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Statement

This is in reply to the brief for the United States in opposition to the petition for a writ of certiorari herein and supplementary to the petition.

The Government, in its argument, has raised the following objections to the granting of the writ, which objections are intended to be briefly disposed of by this reply:

1. That Section 103(a) of the Immigration and Nationality Act of 1952 conferred upon the Attorney General authority for exacting the bond in question.

2. That petitioner has erroneously interpreted Section 214(a) of the Immigration and Nationality Act of 1952.

3. That the petitioner is estopped from challenging the validity of the bond.

In addition, the respondent's brief argues that the Government need not have proved any damages to retain the proceeds of the bond.

Argument

1. The construction of Section 103(a) of the Immigration and Nationality Act of 1952 was extensively discussed in the petition (pp. 7, 8). The Respondent has in no way overcome the petitioner's argument on this score, except to offer its own arbitrary interpretation that "forms of bond" does not mean forms, but substance.

2. The contention advanced by the Respondent for its own interpretation of Section 214(a) of the Immigration and Nationality Act of 1952 is based upon its presumption that the petitioner is guilty of grammatical ignorance, despite the clear and unambiguous language of that section. The Government has sought to bolster its own interpretation of this section by extensive quotation of a predecessor law, which is not under consideration and which has no pertinence to the issues herein.

Cases are cited by the Respondent in purported support of its position. *Kavounas* v. *The United States,* 116 C. Cls. 406, upon which the Government relies, has no application herein. In that case the alien did not depart from the United States when required to do so by the Immigration and Naturalization Service, as opposed to the instant case wherein the alien did depart when required. Moreover, in the *Kavounas* case, no question was raised as to the validity of the bond, the point raised by the plaintiff therein being whether the Board of Immigration Appeals,

in granting voluntary departure to the alien, vitiated previous breaches by the alien of conditions of the bond.

Great Northern Ry. Co. v. *United States*, 315 U. S. 262, is completely extraneous to the issue at bar since that dealt with the interpretation of a railroad right of way as a fee or an easement. The fact that in that case the court gave some weight in the form of *obiter dicta* to previous administrative interpretations likewise has no effect herein since if the administrative interpretation were invalid or illegal, the Court would not have accepted such construction. In the instant case, as is set forth in the petition, the administrative action by the Immigration and Naturalization Service, in exacting the bond in question, was an invalid act and the regulations promulgated by the Attorney General, purportedly under Section 214(a) of the Immigration and Nationality Act, are invalid by reason of the fact that the Attorney General exceeded his statutory authority.

Despite the gratuitous assumption in the footnote on page 8 of Respondent's brief that petitioner has abandoned the position of the District Court in this matter, such is not the case. Petitioner still maintains the correctness of the District Court's opinion when it said (R. 22a), that Section 1184(a) (Section 214(a)) limits the right or authority of the Attorney General to a bond containing such conditions as may be necessary to insure the alien's departure.

Petitioner reiterates that if Congress intended to permit the Attorney General to exact bonds of any description, it would not have incorporated into the language of Section 214(a) an obvious specific designation of the nature of a bond he may require.

3. The United States of America has offered a group of cases to substantiate its claim that petitioner is now estopped from challenging the validity of the bond.

The cases of *Magee* v. *United States*, 282 U. S. 432; *U. S.* v. *John Barth Co.*, 279 U. S. 370, and *McCaughn* v. *Philadelphia Barge Co.*, 27 F. (2d) 628, all dealt with an entirely different type of matter from the one involved in the instant case. In each of those cases a taxpayer voluntarily made a claim in abatement, or offered a voluntary bond to stay a collection of taxes. In the *Magee* case, the taxpayer who had made the voluntary claim in abatement, sought to declare such abatement illegal. The Court held that since he derived certain benefits solely as a result of his voluntary act, he could not make such claim. In the instant case, there was no voluntary act and no benefit to the petitioner, such as was received by the taxpayer in the *Magee* case. Herein, the bond was insisted upon and exacted by the Immigration and Naturalization Service.

In the *Barth* case, the taxpayer had given a voluntary bond to stay the collection of taxes due. The Court there held that the statute of limitations on the basic tax claim did not apply to the bond since by furnishing the bond the taxpayer had voluntarily waived the statute of limitations. The *McCaughn* case was similar to the *Magee* and *Barth* decisions.

Even more applicable to the instant case is the fact that none of the above cited cases relied upon by the Government herein raised in any way the validity of any regulation or procedure whereby the bonds in question were furnished, or the forbearance afforded by the Government. In the case at bar, however, petitioner furnished the bond under a regulation, the invalidity of which has been demonstrated in the petition and in this brief. It is elementary that there is a substantial difference between a bond illegally exacted in contravention of statute, and one voluntarily furnished under a valid, subsisting regulation or procedure.

Hartford Accident and Indemnity Co. v. *United States*, 130 C. Cls. 490, only held that a surety was chargeable with knowledge of the terms of contracts it was guaranteeing.

The Respondent has offered no citations whatsoever to show that an estoppel or waiver may exist against the petitioner herein.

4. The cases cited by the Respondent in support of its contention that the Government is entitled to the full principal amount of the bond without proof of damages, i.e., *Illinois Surety Co.* v. *United States*, 229 F. 527; *Fresh Grown Preserves Corp.* v. *United States*, 144 F. (2d) 136; *United States* v. *Bornn*, 104 F. (2d) 641, certiorari denied, 308 U. S. 606, all dealt with bonds where the Government was entitled to retain the proceeds as a penalty. As was set forth in the petition (pp. 9, 10), petitioner does not deny the right of the United States of America to exact a bond with a penalty provision. However, in the instant case, the bond (R. 5a) specifically provided that the petitioner was bound in the amount of $500.00 "as liquidated damages and not as a penalty".

In addition to the reasons advanced in the petition why this Court should grant the writ of certiorari herein, it is desired that the Court be apprised of the fact that the issue herein is an important question of federal law which has not been, but should be settled by this Court. Although the monetary consideration involved in the instant case is comparatively small, there are, to the best of counsel's information and belief, thousands of bonds exacted by the Immigration and Naturalization Service each year, many of which are breached by the Government for violation of some condition on the part of the alien. A determination by this Court of the questions presented by the petition will finally clarify a matter which has long been in issue between the Immigration and Naturalization Service and aliens and their attorneys.

CONCLUSION

In view of the foregoing, and the reasons advanced in the petition herein, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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August, 1958.